# Information Technology Meets International Contracting: Tales from a Transpacific Seminar

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## INTRODUCTORY NOTE

The following account is in essence a personal memoir concerning the first year of what, at the time, was a novel course offering: an international negotiation simulation, conducted transnationally, in which teams of students from the University of Tokyo utilized e-mail, videoconference facilities, and other resources to negotiate a major acquisition agreement with teams of students from the University of Washington. I originally wrote the account in 2001. As of this writing, in early 2005, we have just completed the fifth year of the course; and in the interim, professors at a number of other universities have established courses along similar lines, including the course

* I would like to express my appreciation for the Ministry of Education, Science, Sports and Culture, Grant-in-Aid for Scientific Research (B)(2), No. 13420012, 2001-2005, which helped provide support for my work on this project.

offering discussed by Kent Anderson in his article in this volume.[1] Rather than attempt to rewrite the following article in its entirety to reflect all of the developments in the intervening four years, I have elected to retain it in its original form, as a contemporary account of the first year of what has proven to be a successful experiment. Where intervening developments warranted inclusion, I have added updates in brackets.

In August 2000, I left a professorship at the University of Washington (UW) School of Law to assume the chair in Law and Society at the University of Tokyo (Tôkyô Daigaku, hereinafter shortened to Todai) Faculty of Law. Traditionally, when a law faculty[2] in Japan hires a professor laterally from another university, the dean at the new school pays a personal visit to the dean of the prior school, to apologize and to request formal permission to consummate the hire. In my case, that ritual took the form of an exchange of letters between the two deans. In their exchange, Dean Sasaki Takeshi[3] of the Todai Faculty of Law and Dean Roland Hjorth of the UW School of Law both pledged to use my move as an opportunity to expand the already substantial ties between the two schools.

As one step in that direction, for my first seminar at Todai I decided to undertake a project that represented a new venture for both schools: a truly transpacific international contracting seminar, offered jointly[4] by the two schools. The centerpiece of the seminar was to be a simulation, in which teams of students from UW and teams of students from Todai would utilize e-mail and interactive video to negotiate and draft a corporate acquisition agreement.

I encountered sufficient hurdles and setbacks along the way that, with less than a month to go before the start of the semester, I was ready to throw in the towel. I'm thankful I did not do so, for the seminar turned out to be the most exciting and rewarding teaching experience I've ever had. I offer the following account in the hope others might learn from my experiences with a transpacific seminar.

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1 ZJapanR/J.Japan.L. No. 19 (2005) 101 ff. in this issue.

2 A law faculty is essentially the equivalent, in US terms, of an undergraduate law department. For a discussion of law faculties and Japanese legal education in general, see Section I.B. *infra*.

3 In this article, Japanese names are given in the normal Japanese order, with the family name first.

4 The offering was "joint" in terms of organization and coordination, but as a formal matter consisted of separate parallel offerings at the two schools (a "seminar" in the case of Todai, a "course" at UW).

## I. BACKGROUND AND BASIC CONCEPTION

### *A. Genesis: Existing Models*

The joint – or, more precisely, linked – seminar grew out of two separate models at UW. With regard to substance, the applicable model was a long-time offering at the School of Law entitled International Contracting: Negotiations and Drafting. On the technical side, the model was a recently established joint project between the UW College of Engineering and the Faculty of Engineering at Tohoku University in Japan.

Professor John O. Haley started the existing International Contracting course in the early 1980s. By that time, the UW Asian Law Program (which began in 1962) every year attracted approximately twenty LL.M. candidates, many of whom had years of experience working for law firms or company legal departments in Japan and elsewhere in Asia. On an experimental basis, Haley had a team of LL.M. students from his course on US/Japan Contract and Sales Law negotiate a contract with a team of 1Ls from the basic Contracts class. The experiment was so successful Haley expanded it to a regular course offering, in which the LL.M. students joined in teams with J.D. students, representing "clients" drawn from a linked course at the UW School of Business. The course included examination of comparative and theoretical materials regarding attitudes toward contract, negotiation strategies, and other academic topics. The core of the course lay in a simulation, in which the teams negotiated and drafted agreements dealing with major international transactions. (Over the years, the subjects of the simulations included mergers and acquisitions, joint ventures, licensing, supply, distribution, and technology transfer agreements.) The course frequently was team-taught, in some years jointly by professors at the School of Law and the School of Business, in other years by a faculty member and a practicing attorney.

The UW College of Engineering's project with Tohoku University has a much shorter history. It commenced in 1999, as the brainchild of Professor Gretchen Kalonji, who had spent a year as visiting professor at Tohoku (and who also chairs UW's International Faculty Council). The engineering program links teams of freshmen at UW with teams of upper level students at Tohoku. The teams collaborate on a wide range of engineering projects (on topics such as micromachining, tsunami, smart materials, etc.) and produce joint reports on their research. In doing so, they utilize e-mail, interactive video (namely, CU-SeeMe, an Internet-based interactive video system described in more detail later), and other media.[5]

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5 A fuller description of this program can be found at the following Web site: <*http://depts.washington.edu/uwww/fig/ENGR100/*>. [*Update as of 2005:* The Web site listed, last visited on January 26, 2005, provides information regarding the offering of the course in the 2004-2005 academic year. That project has now expanded to a collaboration among four universities: UW, Tohoku University, Sichuan University, and Tsinghua University.]

I thus had two models to work with: one for content, another for the technical aspects. I envisioned some variations to both, but for the most part planned to base the new seminar on those models, using a corporate acquisition as the topic the first year.

### *B. Brief Overview of Japanese Legal Education*

Before turning to the experience with the seminar, a brief overview of Japanese legal education may be in order. Currently [*i.e.*, as of 2001], debate is raging in Japan over the future shape of legal education. In late 2000, both the Ministry of Education and the Justice System Reform Council (an advisory council established by the Diet and charged with reporting to the Cabinet on a wide range of fundamental aspects of the justice system, including legal education) issued interim reports endorsing establishment of a new tier of law schools. In June 2001, the Justice System Reform Council, in its final report to the Cabinet,[6] reiterated its support for the establishment of new law schools, to begin admitting students in the spring of 2004. The proposed new law schools are to be three-year graduate schools, quite similar in form to US law schools. If the proposal becomes a reality (as seems highly likely, since concrete planning efforts are now underway), it will signal a major shift in Japanese legal education.[7]

At present [*i.e.*, as of 2001], legal education in Japan is predominantly conducted at the undergraduate level, through so-called law faculties. Law is treated as a core social science at the undergraduate level; indeed, the law faculty is widely regarded as the most prestigious undergraduate faculty. Over ninety universities in Japan have law faculties.[8] Combined, they graduate some 47,000 students each year.[9] Faculty members typically are scholars who have undertaken advanced graduate study in law. Although a few law faculties have recruited full-time faculty members from among legal practitioners and a number of schools utilize practitioners for part-time teaching, it remains

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6 *Shihô Seido Kaikaku Shingikai ikensho*, *21-seiki no nihon wo sasaeru shihô seido* [Recommendations of the Justice System Reform Council – For a Justice System to Support Japan in the 21st Century –], Tokyo, Japan, June 12, 2001 (hereinafter referred to as RECOMMENDATIONS).

7 [*Update as of 2005:* Needless to say, the reforms referred to in the text have become a reality, and they have profoundly affected the legal education process in Japan. For accounts of the reforms and their impact, see, *e.g.*, D.H. FOOTE, Forces Driving and Shaping Legal Education Reform in Japan and other articles included in the symposium "Build It and They Will Come: The First Anniversary of Law Schools in Japan" at the University of Melbourne Law Faculty, 20-21 February.

8 Fifteen national universities, seventy-five private universities, and three public regional universities have law faculties. See *Hôsô yôsei seido kaikaku no kadai sankô shiryô* [Tasks for Reforming the System for Training the Legal Profession (Reference Materials)] (prepared for the Justice System Reform Council), March 2, 2000 (hereinafter referred to as REFERENCE MATERIALS), at 75.

9 See *id.* This number exceeds the number of annual law school graduates in the United States currently, in a country with less than half the population of the United States.

rare for professors to have broad practice experience; and, at national universities such as Todai, faculty members are prohibited from consulting.

Typically, students in law faculties spend the first year of college and part of the second focusing on basic liberal arts education. The remainder of the four years[10] of college is normally spent pursuing legal study. Coverage is broad, ranging from introduction to law through advanced procedural and substantive law courses.[11]

Most law faculty courses are taught via the lecture method, often to hundreds of students at a time. Individual teaching styles and methods vary, but the primary focus tends to be a mixture of doctrine and scholarly interpretation. Japan has a Code-based system; and great attention is given to the provisions of the relevant Codes and other statutes. In part as a result of influence from US legal education, in most courses considerable attention also is paid to case law, particularly Supreme Court precedent.

In addition to the lecture courses, most students take at least one, and sometimes three or four, seminars during their third and fourth years. Enrollment in seminars is limited; typical seminar size is from ten to twenty students. Seminars tend to focus on advanced or current topics within a given professor's field and often involve comparative or theoretical perspectives. Explicitly practice-oriented seminars remain rare, however. At the seminar level, teaching styles vary considerably. Reports and presentations by students are common; and, in sharp contrast to the lecture courses, active discussion is the norm rather than the exception. Although still somewhat unusual, practitioners sometimes participate as guest speakers. Simulations are not unheard of, but they too remain rare. As the subsequent explanation will show, the joint Todai/UW seminar was unusual for Japan on several scores.

Not all law faculty graduates become lawyers. Far from it. To the contrary, by far the largest number of graduates go into the business world.[12] Despite a doubling over the past decade, the number of new lawyers for the entire nation currently is capped at approximately 1000 each year;[13] and not all of those come from law faculties.

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10 In the case of those who are seeking to pass the Judicial Examination (which, as discussed below, technically is the entrance examination for the Legal Training and Research Institute), it is not uncommon for students to defer graduation and extend their undergraduate education for a fifth or sometimes even a sixth year.

11 At Todai, a typical course load might include, in the second year of college, eight credit hours of introductory law courses; and, in the third and fourth years, Constitutional Law I and II, Civil Law I, II, III and IV (including property, contracts, torts, secured interests, succession, and other topics), Criminal Law I and II, Commercial Law I and II, Civil Procedure I and II, Criminal Procedure, Administrative Law, Labor Law, Jurisprudence, Law and Society, Japanese Legal History, History of Western Legal Thought, Anglo-American Law, German Law, International Law, and Taxation, along with two or three seminars.

12 See REFERENCE MATERIALS, *supra* note 8, at 78.

13 Japan has a career judiciary and a career procuracy. The 1000 successful candidates include new judges and prosecutors, as well as practicing attorneys.
The proposed legal education reforms are positioned as part of a broader set of reforms of the legal profession. Another major proposal of the Justice System Reform Council is an in-

For graduates who wish to become lawyers, two additional steps are necessary. First, they must pass the ultracompetitive Judicial Examination (*shihô shiken*), which is given once a year (and which is open to anyone, not just law faculty graduates). Even after the doubling of the number of successful candidates, the passing rate on that exam, as of 2000, remained just 2.75%. On average, successful candidates had taken the exam between four and five times and were nearly twenty-seven years old before they passed.

Passing that examination does not immediately qualify one for admission to the bar, however. Rather, that exam constitutes the entrance examination for the Legal Training and Research Institute (LTRI); one and a half more years of training follow before admission to the bar. That training is heavily practice-oriented, albeit with a heavy focus on litigation. The training begins with three months of classroom instruction at the LTRI (for which the instructors are drawn from among judges, prosecutors, and practicing lawyers), and ends with three more months of instruction at the LTRI. The intervening twelve months are spent in three-month rotations in a criminal court, a civil court,[14] a prosecutors' office, and a law firm. Nearly everyone accepted into the LTRI successfully completes the program.

In theory, passing the Judicial Examination and successfully completing training at the LTRI represent the key requirements for becoming a lawyer. As mentioned above, graduation from a law faculty is not mandatory. Indeed, even high school dropouts can take the Judicial Examination. In recent years, however, virtually all successful candidates have undertaken another stage of training: intensive exam preparation study, typically at special cram schools. According to a survey conducted in 1999 among those who had passed the Judicial Examination, of 626 people responding, 625 – all but one – had attended exam preparation schools. Of those 625, well over 90% had attended such schools for at least one year; over 80% had attended for over two years; and fully one quarter had attended for more than five years.[15]

As one would expect, training at the exam prep schools closely follows the subject matter of the Judicial Examination. That exam currently tests six fields of law: Constitutional Law, Civil Law, Commercial Law, Criminal Law, Civil Procedure, and Criminal Procedure. Instruction at the prep schools focuses on those six fields. Courses cover fundamental aspects of each field, with a heavy focus on major debates in the field. The prep schools also place heavy weight on exam-taking techniques and strategies. Students carefully study prior exam questions and model answers and practice exam

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crease in the number of newly admitted legal professionals to 3000 by about the year 2010. See RECOMMENDATIONS, *supra* note 6, at 57-58. [*Update as of 2005:* That proposal has been adopted; and the cap already has been raised somewhat: in 2004, approximately 1500 candidates passed the bar exam.]

14 In Japan, at both the District Court and High Court level, the courts are divided into criminal and civil divisions (with occasional special divisions in fields such as labor law, administrative law, and intellectual property).

15 See REFERENCE MATERIALS, *supra* note 8, at 53.

taking extensively. Prep school instructors primarily are drawn from among practicing lawyers, but also include some university professors and some "stars" who passed the Judicial Examination at a young age but have not yet become lawyers.[16]

On the abovementioned survey, over one third of the respondents reported that they began attending exam preparation schools by their second year of college – attending the exam preparation schools either in addition to, or instead of, their regular college classes.[17] These patterns are referred to in Japan as the "double school" and "university flight" (*daigaku banare*) phenomena. They represent one of the important concerns underlying the proposal to create a new law school system. There is a widespread perception that those seeking to become lawyers today devote so much time and energy to narrow exam preparation that they lack breadth and balance and fail to develop the broad range of skills and qualities essential for the legal profession.

One additional aspect of Japanese legal education deserves mention: graduate programs in law. Traditionally, graduate legal education at universities was focused primarily on those seeking academic careers. Over the past ten years, however, nearly a dozen universities, including Todai, have introduced LL.M. programs aimed at providing advanced education for students from the worlds of business and practice. These new graduate programs are referred to as the *Senshû* [Specialized Study] Course.[18]

### *C. Basic Conception of the Joint Seminar*

Returning to the Todai/UW joint seminar, that seminar, in its basic conception, was to consist of parallel, linked offerings at the two schools, with myself in charge at Todai and a member of the UW faculty in charge of the UW offering.

#### *1. Students*

Each side would have either twelve or sixteen students, divided into teams of four students each. In turn, two members of each team would act as attorneys and two as businesspersons. Ideally, the students would bring relevant experience to their roles. On the UW side, one LL.M. student with law firm practice experience might be paired with a J.D. candidate to play the roles of the attorneys, with business school students playing the roles of the businesspersons. At Todai, I envisioned pairing undergraduates with *Senshû* Course students possessing experience as attorneys and businesspersons, respectively. To overcome the language barrier, each Todai team ideally would include at least one student who had lived overseas. Conversely, the UW School of Law regu-

16 See *id.* at 64-65.
17 See *id.* at 53.
18 [*Update as of 2005:* In connection with the introduction of the new law schools, Todai and other universities are phasing out the *Senshû* Course. Presumably, similar LL.M. programs will be introduced at the law schools at some point in the future.]

larly attracts a number of J.D. students with strong Japanese language ability, so the further hope existed that one UW team would be able to negotiate in Japanese.

*2. Planned Structure*

The original conception was that the linked offerings would both begin at the start of October – the start of the academic year at UW and the start of so-called Winter Semester at Todai – and would run until the end of January, shortly before Todai enters final exams. The respective groups would meet independently for the first two weeks, with those sessions devoted to forming teams and introducing materials related to interviewing and counseling clients. In the initial phase of the simulation, the businesspersons on each team would be given the basic fact pattern for their respective side, along with a Memorandum of Understanding executed by representatives of both companies. The attorneys then would be responsible for setting up interviews with their "clients" in order to learn the facts and begin the counseling process.

The third and fourth classes would consist of large-scale real-time videoconferences linking all participants on both sides of the Pacific. A major objective of these sessions was to introduce the teams and give the students an opportunity to get to know each other. In addition, these sessions would include two guest experts, an experienced businessperson and an experienced business attorney, on each side. This would enable panel discussions, from a comparative US/Japan perspective, of such issues as the relationship between attorneys and clients (including differences in US and Japanese expectations), attitudes toward contracts, and negotiating styles.

After the two videoconferences, the teams would enter the second phase of the simulation: transnational negotiations. The teams would begin with discussions aimed at clarifying the points of agreement and key remaining issues, one side or the other would then prepare a first draft, and the teams would proceed to negotiate with a view toward resolving all issues and finalizing an agreement. For these negotiations, the teams would exchange drafts via e-mail and would utilize the small-screen interactive video of CU-SeeMe for the actual negotiating sessions. As originally conceived, these negotiations would last all of November and the first week of December, would break for exams at UW and the holidays, then would resume for approximately three weeks in January.

During the negotiation process (and during periods when one university was on break and the other in session), the respective classes would continue to meet – separately in Tokyo and in Seattle – on a regular weekly basis. These class sessions would take up a mix of practice-oriented and more theoretical materials. While some of the same themes and topics might be examined in both schools, for the most part there would be no need to utilize exactly the same materials. To the contrary, given the differences in backgrounds and levels of knowledge of the students in the two schools (not to mention the fact that, except for the joint videoconferences, the sessions in Japan would be conducted in Japanese), it was inevitable most materials would be different.

At the conclusion of the negotiating process, all participants on both sides would reassemble for one or two final large-scale videoconference sessions. These sessions would provide an opportunity to debrief the teams, review the final agreements (or discuss why it was impossible to reach agreement), and consider whether the students' own experiences reflected culturally specific negotiating styles.

## II. ADVANTAGES AND HURDLES

### *A. Existing Advantages*

In addition to the existence of concrete models to work from, several built-in advantages seemed likely to ease the path for establishing the linked seminar. The first was the mutual pledge of the two deans mentioned above.[19]

Second, having been on the UW faculty for twelve years, and having been a visiting professor at Todai on two occasions during that period, I was familiar with both institutions and knew many people in both places. On the UW side, I was able to tap into the knowledge of Kalonji and others regarding the UW/Tohoku collaboration and to obtain logistical support (in establishing a Web site, for example) from the International Faculty Council. In addition, a colleague at Todai, Professor Noboru Kashiwagi, had expressed his enthusiastic support. This was especially important, for Kashiwagi, who teaches International Business Transactions, joined the faculty after a distinguished career at Mitsubishi Corporation and could offer insights from business and practice perspectives (as well as advice on materials in Japanese).

Third, the initial expectation was that both institutions would have the key technological infrastructure in place in time to support the offering. CU-SeeMe, which utilizes a small camera that attaches to the top of personal computers connected to the Internet, reportedly was relatively inexpensive and easy to install. Thus, the most problematic technological aspect appeared to be the large-scale videoconference facilities. According to one knowledgeable member of the Todai faculty, Todai already had three major videoconference facilities. At UW, the School of Law had finalized plans to invest over

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19 Indeed, the pledge was renewed in person shortly after my arrival in Tokyo, during a courtesy call Dean Hjorth (who happened to visit Tokyo on another matter) paid on new Dean Hiroshi Watanabe.
Incidentally, at the Todai Faculty of Law, the deanship is a two-year position, normally with no renewal. [*Update as of 2005:* The term of the deanship recently was extended from two to three years.] Deans are elected by the faculty. Typically, the dean is chosen from among faculty members in their mid-50s, serves for two years, then returns to teaching for at most a few years before reaching the mandatory retirement age – which until [2001] was 60. (Retirement ages vary among universities in Japan, even among national universities. Todai's retirement age of 60 had been among the earliest. It is scheduled to rise gradually to 65 over a fifteen year period.)

$200,000 to equip a classroom with state-of-the-art videoconferencing and distance learning equipment during the summer of 2000.

Fourth, even though Todai is on the semester system and UW the quarter system, the academic calendars at the two institutions mesh quite closely. At Todai, the Winter Semester starts at the beginning of October and runs through March. On its face, this just about exactly matches the timeframe of the combined Autumn and Winter Quarters at UW, thereby seemingly assuring relatively easy coordination of schedules.

Fifth, and perhaps most importantly, I expected to have some time to devote to the project. The Todai academic year begins in April, so I was joining midway through the year; and my full teaching load would not commence until the following April.

As an additional promising sign, in April 2000, shortly after I had conceived the idea for the joint offering, the Fulbright Program announced the establishment of a new grant program, the Fulbright Scholar Alumni Initiatives Awards (AIA) Program. According to the announcement, the awards (ranging from $1000 to $20,000) were designed "to encourage ... ongoing linkage between [former Fulbrighters'] home and host institutions" by "offer[ing] funding to help former Fulbrighters develop innovative projects that will foster and sustain contacts and partnerships initiated as a result of their Fulbright experience." The announcement specifically mentioned "distance learning innovations" as an example of the type of project contemplated. Even more gratifying was the announcement, in mid-August, that the joint Todai/UW seminar had been selected for one of the initial AIA grants.[20] In retrospect, for reasons discussed below, receiving the AIA award proved critical to the success of the project.[21]

### *B. Known Hurdles*

Despite the existing advantages described above, it was obvious there would be many hurdles to overcome. One major set of hurdles related to the substance of the offering. On occasion, I had served as a guest speaker and had observed negotiating sessions for the existing International Contracting class, but I had never taught the class myself. Even more importantly, during the initial planning stage, there was no faculty collaborator at UW. At nearly the same time I moved to Tokyo, Haley moved to Washington University (in St. Louis). And the practicing attorney who had been teaching the

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20 The competition, it turned out, had been even more intense than I had realized. According to the award announcement, only 24 projects were selected out of approximately 525 submitted. The joint Todai/UW seminar was the only project selected that involved Japan.

21 [*Update as of 2005:* Just as the AIA grant was winding down, I was fortunate enough to be part of a research project that received a grant from the Ministry of Education, Science, Sports and Culture, which provided support for certain aspects of the project in subsequent years, including collaborative efforts to prepare the simulations and other materials on negotiation.]

International Contracting course in recent years also had just moved to a new job and was no longer available.

I also was aware of many hurdles relating to technology. At the outset, both the large-scale videoconference facilities and the small-scale CU-SeeMe equipment resided solely in the realm of expectations. The reports of Todai's videoconference facilities remained unconfirmed, as did the availability of those facilities and their compatibility with UW's equipment. Although the videoconference facility at the UW School of Law was on order, it had not yet been installed. Neither school had acquired or installed the CU-SeeMe equipment yet; and, as I learned later, in the UW/Tohoku project the audio quality of CU-SeeMe had been so low students resorted to the chat-room function, in which they communicated by typing out their messages to each other. While the chat-room function would permit real-time interaction, it would surely put a significant crimp in trying to conduct vigorous negotiations. As a final obstacle, my own level of knowledge regarding the technological aspects of the project was close to nonexistent.

### *C. Unknown Hurdles*

Going into the project, I fully anticipated encountering many other hurdles. I just did not know exactly what form they would take. My fears turned out to be more than justified. Something I had not fully appreciated, though, was that in many cases it seemed as though one issue could not be resolved unless two or three others were handled first. The following is a partial listing of hurdles encountered.

#### *1. Technology-related Hurdles*

Virtually all the initial expectations regarding the technological capabilities of the two schools proved overly optimistic. Initially, computing and communications staff at both schools indicated they needed to know the exact specifications of the other school's facilities before they could determine compatibility. For someone like me who did not know the specifications of either, this posed a dilemma.

As it turned out, however, the specifications for the originally contemplated video-conference facilities proved largely irrelevant. Todai does have three large-scale video-conference facilities; but all three utilize radio signals, which would require a satellite feed to connect to the West Coast and would render them prohibitively expensive. As if that were not enough of an obstacle, the facilities currently are reserved exclusively for domestic use.[22] On the other side, the UW School of Law did outfit a classroom for

22 [*Update as of 2005:* The high cost and technical difficulty posed by a satellite-based system rendered the point moot; but, to me, one of the most aggravating aspects of the experience was learning of the policy reserving the videoconference facilities for domestic use. I was never able to confirm the rationale underlying the policy. (Nor, for that matter, was I even able to confirm that a formal policy to that effect actually existed. Whether or not the policy

videoconference use, but the new, supposedly state-of-the-art facility experienced technical glitches in early trials, even within Washington State. As if that were not bad enough, there were scheduling conflicts for the days in question.

Accordingly, alternative facilities had to be arranged in both places. In Seattle, the alternative turned out to be another UW facility, a few minutes across campus. In Tokyo, the alternative turned out to be a facility at the Tokyo American Center (TAC), which is under the auspices of the US Embassy and is about a half-hour from Todai by subway. As luck would have it, both facilities use the same type of equipment, Polycom ViewStations, which helped ensure compatibility. The Fulbright award proved critical. The executive director of the Fulbright office in Tokyo provided the introduction to the TAC facilities; and the award assured adequate funding for the costs associated with using the alternate facilities. Moreover, the involvement of TAC turned out to be a godsend. The director offered useful suggestions on conducting the sessions. Several members of the staff offered guidance on videoconferencing, came in early to conduct trial runs, and made many special arrangements for use of the facilities. In addition, they were eminently efficient and flexible with regard to scheduling and conducting the videoconferences – even when last minute changes in plans became necessary.

Both schools did outfit computers with CU-SeeMe cameras and software. Again, the fact both schools acquired the same system presumably helped ensure compatibility; and, to our pleasant surprise, the audio quality was good. It was early November before the equipment was acquired and installed in either location, though, and another two weeks passed before the settings were adjusted properly and microphones on both ends activated.[23] By then, for reasons discussed below, only about a week remained for the negotiations.

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in fact had been formalized, those responsible for the facilities at Todai understood such a policy to exist; and faculty members from other national universities told me their universities also followed that policy.) As for the rationale, I was told by several people that the reason for the limitation to domestic use was "because these are national universities, and accordingly the facilities are to be used for national purposes" – with the obvious further presumption that only domestic use would serve national purposes. Given all of the rhetoric about the need for internationalizing university education, I was dumbfounded by that explanation; and I proceeded to engage in low-level efforts at shaming, by mentioning the policy (and noting its ludicrousness) in conversations and presentations regarding the joint seminar. As updates in later sections of this article will discuss, by the third year of the joint course Todai acquired Internet-based videoconference facilities; and use of those facilities for transnational purposes is not only accepted but welcomed. To this day I don't know whether my efforts at subtle shaming played any role in the shift.]

23 Troubleshooting manuals typically begin with the most obvious questions, such as: Is the equipment plugged in and turned on? We would have been wise to follow that approach ourselves. After two long, frustrating test sessions of good video but dead silence on the Tokyo end, during which we tried virtually every combination of settings imaginable, we finally noticed the microphone in Seattle never had been turned on.

### *2. Scheduling*

Classes on both sides started the same week, but many other assumptions regarding scheduling were overly optimistic. One issue was the time difference, which became of paramount concern when scheduling the real-time sessions: i.e., the joint videoconference sessions and the CU-SeeMe sessions. Tokyo is 16 or 17 hours ahead of Seattle (depending on whether Daylight Savings Time is in effect). This means sessions scheduled from 9:30 to 11:30 a.m. in Tokyo take place either from 4:30 to 6:30 p.m. or from 5:30 to 7:30 p.m. on the prior day in Seattle.[24] The time difference requires accommodations on both sides, but, at least for seminars involving only a small number of students, it is not insurmountable.[25]

The academic calendar proved more problematic. Todai has only two weeks of classes in January before the reading period starts, rather than the four weeks originally anticipated. To allow time for a wrap-up videoconference session, this would leave only one week for negotiating in January. Since it seemed unrealistic to break off negotiations for five weeks and then resume for at most one week, we elected to conclude the negotiations prior to UW's fall exams. To give the UW students at least a few days before the exams started, as a practical matter the negotiations had to conclude by the start of December. Moreover, the two nations combined have a total of five holidays in November, further reducing the time available. In sum, instead of having eight weeks for the negotiations, the teams effectively had only about a month.[26]

### *3. Coordination of Content and Other Matters*

I envisioned having a faculty collaborator at UW on board by the end of August and hoped to meet him or her in person by mid-September, either in Tokyo or in Seattle, to coordinate the simulation and other materials, scheduling, and other matters. Unfortunately, no regular UW faculty member was available. Even worse, it was mid-September, less than two weeks prior to the start of classes, before word arrived that Stephen Sieberson, a practicing attorney, had agreed to serve as Affiliate Professor in charge of

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24 About a month into the project, we discovered the obvious shorthand method of referring to a given videoconference session as, for example, the October 19/20 session, to reflect the fact it was occurring on different dates in the two locations.

25 Trying to coordinate schedules between Tokyo and the East Coast of the United States would be more difficult, however. When Daylight Savings Time is in effect, the same 9:30-11:30 a.m. session in Tokyo would not conclude until 10:30 p.m. on the East Coast.

26 [*Update as of 2005:* The lack of time has proven to be an annual problem. By frontloading the course and holding double sessions for the first week or two on the Tokyo end, we have been able to allocate six full weeks for the negotiations and contract drafting, but the schedule is still too rushed. One option suggested by some Todai students is to expand the course to a full-year offering, with the first semester devoted to training and the second to the simulation. But that option would present other problems – not the least of which is my own desire to offer a different, more theory-oriented seminar in the first semester.]

the course – and at the time he was in Holland, teaching an intensive week-long course in American law at Erasmus University.

In retrospect, the ultimate choice more than made up for the delay. Sieberson had taught the International Contracting course at UW himself from 1988-90 and has taught the intensive weeklong course at Erasmus every year since 1981. He has a thriving international practice and combines extensive practical experience with a love for teaching. In short, he proved to be an ideal collaborator. Still, we both look forward to having the opportunity to coordinate thoroughly in person before the coming year's seminar starts.

Particularly given the absence of a faculty collaborator, publicizing the offering at UW proved difficult. Indeed, even after the Todai seminar had started, it remained unclear whether enough students would enroll at UW.[27]

The concern over publicity ties to one final difficulty relating to coordination: achieving balance between the students on the two sides. One aspect of the balance is the size of teams. At UW, as a result of the uncertainty and lack of advance publicity, only nine students enrolled. This resulted in three teams, each comprised of one "businessperson" and two "attorneys." At Todai, the opposite problem existed: too many students. Nine graduate students and 29 undergraduates applied. I accepted all nine graduate students and nine of the undergraduates, anticipating substantial attrition once the students learned how much work would be involved. I need not have worried on that score. At Todai, it turns out, students may only sign up for one seminar per semester. If accepted, they are committed.[28] To deal with the numbers, I elected to assign three undergraduates, along with one graduate student, to each of the three teams, with two more graduate students serving as "observers" for each of the teams.

A second aspect of the student balance issue relates to experience levels. Due largely to the lack of advance publicity, all nine students on the UW side were from the J.D. program; there were no Business School students and no students from the LL.M. program. Even so, it stood to reason the UW participants would have more real-world experience than most Todai participants, since three of the four members of each Todai team were undergraduates. In fact, even among the graduate students at Todai, only two had actual business experience, and both were so busy with thesis research they could only serve as observers. In striking contrast, even though word had gone out too late for any business school students to enroll, several of the UW students had prior business experience. During the self-introductions in the first videoconference session, Todai students gasped when the first UW student introduced himself. Before coming to law

27 In fact, I resorted to contacting by e-mail a 3L at UW who had been my student the prior year. He helped spread the word among students.

28 If, due to enrollment limits, they are bumped from their initial choice, they may sign up for another seminar, assuming there are still openings at that point.

school, he had earned an M.B.A. and had been in business for seven years (during part of which he had run his own business), and he even taught business school classes.

Finally, on the communications front, only one of the Todai students had lived abroad and, during the initial class session (conducted in Japanese), virtually all the students professed concern about their English ability. Moreover, the Japanese speakers at UW were split up among the three teams, so it would not be feasible for any of the teams to conduct the negotiations in Japanese.

## III. ACTUAL EXPERIENCE

To this point, the linked seminar idea may seem like a recipe for disaster. Nothing could be further from the truth. The project demanded great flexibility on the part of the respective institutions, the students, and the collaborating faculty members; and I kept my fingers crossed much of the time. Yet virtually every stage of the project succeeded beyond what one ever could have hoped for.

### *A. Client Interview Simulation*

The students approached the client interviews, as they did all aspects of the project, energetically and enthusiastically. The lawyers and the businesspeople met independently in advance to plan for the interview, then held as many as three meetings, until the lawyers were comfortable they had all relevant facts.

On the UW side, nearly all the students knew each other well before the project started. They reported that their friendship facilitated easy communication. On the Todai side, only a few of the students were friends, and the interview phase played an important role in the bonding process.

One reservation concerning the interview phase was that the students experienced difficulty placing themselves in the role of businesspeople. This tendency seemed especially pronounced in Tokyo. When students were choosing the roles of attorney or businessperson, one student asked quite honestly and innocently, "What's the difference?" Yet the tendency was not limited to Tokyo. Most law students on both sides, whatever their assigned role, tended to look at the fact pattern primarily as a series of legal issues, rather than as a business matter. In doing so, they sometimes overlooked important business considerations – including the fundamental question of whether the proposed acquisition represented a sound business decision.[29]

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29 To some extent, this may have been a function of the fact pattern. According to the facts assigned, the presidents of the respective companies had met, shaken hands, and signed a Memorandum of Understanding for acquisition of one company by the other. They evidently had done so without ever consulting with, much less obtaining authorization from, the respective boards of directors. Even though, according to the facts, the two businesspeople

This tendency was anticipated, though, and was entirely consistent with past experiences with the International Contracting course at UW. Indeed, one of the reasons for beginning with the client interview was precisely to highlight and discuss the tendency of many lawyers to focus so exclusively on legal issues that they overlook broader business concerns.

### *B. Initial Videoconferences*

The client interview phase was reassuring. It offered hope the project would come together. The initial videoconference sessions were truly exhilarating. The first session lasted two hours. As soon as we went off the air, the students in Tokyo broke out in excited conversations. At the suggestion of the director of TAC, we had ordered box lunches for the group in Tokyo. The two guests stayed for an hour after the session ended, talking with students over lunch. The students and I remained for yet another hour. Even at that point, fully two hours after the session had ended and four and a half hours after the students first had arrived, the level of excitement and energy remained sky-high. By the second session, the sense of novelty had started to wear off. The level of excitement, in consequence, declined a bit from the first session, but still remained many times higher than for a typical domestic seminar session.

On the technology front, a trial run a few days before the first session allowed the technicians to remedy a minor glitch in the connections. Thereafter, the technology – utilizing two telephone lines to link Polycom ViewStations on both sides[30] – worked superbly for both sessions. Three large-scale monitors provided excellent video reception (as well as a view of the video feed the other side was receiving). Once we learned an important practical lesson – to be sure all participants are near a microphone and speak clearly into it, the audio quality also was excellent.[31]

Part of the success of the videoconference sessions resided in the content. For the first session, we were joined in Tokyo by Kashiwagi (the Todai professor who formerly headed Mitsubishi Corporation's legal department) and Yukio Yanagida, a distinguished Tokyo attorney with extensive teaching experience (including a year as Visiting Professor at Harvard Law School). They, along with Sieberson, myself, and many of the

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on each team in Japan were themselves directors of the corporation, the Todai "businesspeople" unanimously agreed they did not feel they had the option of second-guessing the president's decision. (As one student also observed, if they had simply concluded the deal did not make business sense, it could have made for a very short negotiation.)

30 TAC utilized a Polycom ViewStation 512; UW utilized a Polycom Viewstation V.35. According to Polycom's Web site, as of January 2001 both products retailed for under $10,000 in the United States.

31 We had three microphones, spaced evenly up and down the table, on the Tokyo end. For the first session, the Seattle side had only two microphones and some students initially were too far away for good reception.

students, engaged in a discussion of such topics as comparative attitudes toward contract, the role played by contracts in Japan and other nations, and whether the role of contract is changing.

For the second session, Yanagida was away on a business trip. His place was taken by E. Anthony Zaloom, a distinguished American attorney with extensive experience in Asia (including having headed Skadden Arps' offices in both Tokyo and Beijing). Zaloom, who is now a *gaikokuhô jimu bengoshi* (registered foreign law attorney) at a major Tokyo law firm, has written and lectured widely on advising Japanese clients and many other topics. His observations regarding the crucial importance of focusing on the business objectives, supplemented by real-life examples, dovetailed perfectly with the students' reflections on the client interview phase.

The interplay among the participants also brought to light numerous differences in focus and understanding. The most striking example arose when Sieberson, at the close of the first session, posed the following question to students on both sides of the Pacific: "What impact do malpractice concerns have on the role of the lawyer in the contracting process?" The UW students immediately grasped the import of the question. The situation was quite different in Tokyo. First, the students asked what the word "malpractice" meant. (It is telling that Kashiwagi, Yanagida and I had to think for a moment and consult with each other before we came up with the proper Japanese equivalent.) The students then asked for an explanation of the thrust of Sieberson's question: What possible relevance did malpractice concerns have in the contracting context? Needless to say, this provided the basis for a very interesting discussion of differences in standards for malpractice and regulation of lawyers during the subsequent videoconference session.

The most important reason for the phenomenal success of the initial videoconference sessions, though, lay not so much in the content as in the experience itself. For all participants on both sides, this was a first-time experience in a transnational videoconference. Part of the excitement resulted simply from knowing we were engaged in something new.[32] For many of the students in Tokyo, this also was their first participation in a high-level legal discussion in English. As soon as the students introduced themselves, it became apparent the earlier fears about their ability to communicate in English had been misplaced; all of the students spoke well. Moreover, from the students' faces during the videoconferences, it was obvious that, for them, the realization they could understand and participate in such a discussion in English was very exciting. The UW participants also seemed excited by the opportunity to communicate directly with Japanese students.

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32 By the same token, once the novelty of the experience has worn off, the content of the sessions takes on correspondingly greater importance. In future years, as experiences of this sort become routine, content is sure to become all-important. [*Update as of 2005:* This has proven to be the case.]

One further element seems to have added to the sense of excitement. We had already formed the teams on both sides; and the students sat and introduced themselves by teams. The students all knew they were about to enter the negotiation process; and the ability to meet the people they would be negotiating with in person, albeit at a distance of several thousand miles, generated additional excitement. By the second videoconference session, the students were chomping at the bit to get started on the actual negotiations. Indeed, one set of teams could not wait – they exchanged greetings via e-mail and began to raise issues even before the second videoconference.

### *C. Negotiation Phase*

I have never seen a class work as hard for as long as the students did during the approximately month-long negotiation process. On average, the Todai students, who faced steep barriers in terms of language and knowledge of US laws and customs, devoted twenty to thirty hours per week each to this project during that period. (For the UW students, the burden was less than half that, but was still heavy.) What was more astonishing – and, needless to say, gratifying – is that the students seemed to enjoy just about every minute of that time.

In this particular case, the question of who would prepare the first draft of the acquisition agreement turned squarely on practical considerations related to drafting speed. As one Todai student observed, "I know in the real world the purchaser would insist on preparing the first draft, but in this case that would not be feasible." With Sieberson's gentle prodding, the UW students agreed to take on the arduous task of preparing the first draft. Aided by a sample agreement from Sieberson's firm, the teams generated their drafts – ranging in length from twenty-five to over forty pages – in just over a week and sent them to the Todai teams as e-mail attachments.

In the meantime, the Todai teams had been studying the sample agreement and various anticipated legal issues. As soon as the drafts arrived, each Todai team studied the draft it had received in detail, held several team meetings to discuss the meaning and their reactions, met with me to discuss questions and negotiating issues, and drafted responses which they then sent by e-mail to their UW counterparts. The responses took several forms[33] and were sent in several stages;[34] but the teams compiled and sent their principal responses within a week to ten days after receiving the drafts. Given the limited time available to complete the negotiations, at that point Sieberson and I agreed that

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33 The various forms included posing follow-up questions, requesting clarification of facts and contractual language, explaining major concerns and asking for revisions to deal with those concerns, making specific drafting suggestions, and even offering full drafts of proposed supplemental agreements.

34 The teams showed great creativity in both the substance and form of the exchanges. At least one set of teams prepared custom-made letterheads for their respective "clients."

each set of teams should select three or four key issues to focus on in the approximately two weeks that remained.

Until just one week remained before the December 1 deadline, e-mail remained the exclusive medium of communication. Then, finally, for the last week of negotiations, the teams were able to utilize CU-SeeMe. As mentioned earlier, CU-SeeMe is an Internet-based videochat system. It utilizes a small camera unit that attaches to the top of a PC, along with the necessary software.[35] In our experience, a separate microphone and speakers are also important to achieve good audio quality; and, to ensure adequate network capacity, an ISDN line connection is needed. It took some time and experimentation to work out the settings for the software on both ends, the best placement of speakers and microphone, etc.[36] Once the details were worked out, though, the system performed very well. Particularly after experiencing the large-scale monitors in the videoconference sessions, the picture seemed small, at roughly four inches by four inches; and the picture was a bit choppy, since the video feed was only a few frames per second. But faces and reactions could be seen clearly. Moreover, in our experience the audio approached that of a telephone connection, at least when participants spoke

35 According to the Web site of White Pine Software, makers of CU-SeeMe, the camera unit and software were available in a package for just $69 in the United States, as of January 2001. For this project, both Todai and UW also needed to acquire and install new PCs, as well as the microphone, speakers, cables, etc. For the second year of the seminar, Todai also will wire two or three additional sites for ISDN access and invest in security measures to protect the equipment. [*Update as of 2005:* With strong encouragement from the dean of the Faculty of Law, in 2003 Todai's Center for Informational Infrastructure (which is less than a five-minute walk from the Law Faculty), acquired an Internet-based Polycom ViewStation videoconference system, and we have used that system for the seminar for the past three years. In the coming year, 2005-06, the seminar will move from the undergraduate level to Todai's new law school; and Todai is in the process of outfitting two classrooms in the law school building with videoconference facilities.]

36 One basic issue in both Tokyo and Seattle was where to set up the systems in the first place. The existing computer labs were not a realistic option at either school. Having teams of students crowded around a terminal, consulting with each other and speaking in loud voices into a microphone would be far too great a distraction to other users. Yet the location must be secure, must have an ISDN line, and must be accessible to students at the times they wish to conduct the negotiation sessions. The arrangements are complicated by the time difference between the two locations. At UW, the ultimate choice was a storeroom next door to the computer lab, to which access could be provided by the lab technician on duty. At Todai, the stopgap solution this past year was my own office (but new locations are being planned for the coming year).

Another practical hurdle in setting up the CU-SeeMe systems was coordinating the schedules of the computer staff on both ends. The time difference, coupled with the fact that computer staff at both schools faced a seemingly constant stream of other emergencies, made it difficult to get them together at the same time.

directly into the microphone and kept the speakers far enough away to avoid feedback and echo.[37]

In the limited remaining time available, each team was able to schedule a two-hour "face-to-face" negotiating session utilizing CU-SeeMe, and one team conducted a follow-up one-hour session. By that point, the e-mail negotiations had proceeded far enough that the teams were able to resolve in principle nearly all remaining differences in the CU-SeeMe sessions. The teams then worked out final wording via further e-mail exchanges. The final agreements ranged in length from 33 to 49 pages.

### *D. Separate Class Sessions*

In the separate class sessions in Tokyo prior to the interview phase, we examined materials relating to interviewing and counseling. Then, in the sessions prior to the negotiation and drafting phase, we examined materials relating to negotiation techniques and the structure and drafting of acquisition agreements, along with several sample acquisition agreements. This was far from enough to make the students into instant experts but did provide a basic introduction.

The fact pattern for the simulation included intellectual property concerns (patent, trade secret, and trademark), labor and employment issues, and environmental clean-up liability, among other issues. I had envisioned focusing on one such issue each week in the separate class sessions during the negotiation phase. This plan quickly proved impractical on two counts. First, the students could not wait; they needed to learn more about all the issues in order to proceed with the negotiations. Second, once the negotiations hit full stride, the students did not have time for such additional study. Instead, we had two whirlwind sessions at the start of the negotiation phase in which we covered certain relevant aspects of all the above issues, plus a few other matters. The remaining class sessions during the negotiation phase were reserved for dealing with specific issues that arose in the negotiations and for meeting separately with each team.

After the negotiations concluded, we spent the next two class sessions in Tokyo comparing the teams' experiences, assessing the results, and examining important

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37 [*Update as of 2005:* As it turned out, our positive experiences with the CU-SeeMe arrangement the first year were not borne out by experiences in later years. Between the first and second years, UW decided to move the equipment from its original location, a cramped storage room, to more pleasant surroundings. Over the two years that followed the move, the system hardly ever worked well. Fortunately, by the fourth year of the seminar, we were able to arrange weekly negotiation sessions for each of the teams, utilizing the full-scale videoconference facilities, so we never used CU-SeeMe again. I understand that there are now numerous competitors to CU-SeeMe and that the quality of such systems has improved greatly. Nonetheless, once students have experienced large-scale videoconference systems, the small units are far less satisfying.]

aspects of the transaction and the negotiations. The UW side had one such session at the start of December and another in early January.

### *E. Concluding Videoconference Sessions*

In January, all participants on both sides reassembled for two more real-time videoconference sessions. For the first session, Sieberson and I identified in advance three major issues that had arisen in each set of negotiations. We then gave each group approximately one-half hour to discuss their set of issues. A representative of Todai Team 1 led off with a comment on one of the issues. Then a counterpart from UW Team 1 responded and the two, along with other students, discussed the issue. A second Todai student then raised another issue, to which a second UW student responded. Then a third person on each side did likewise. Teams 2 and 3 proceeded in the same fashion.

Any fears the students might have forgotten the negotiations during the intervening month were immediately put to rest. All nine principal participants on both sides engaged in a high-level discussion of the issues and the dynamics of the negotiation process, all conducted in English. The two-hour session went by very quickly. I observed one significant difference from the initial videoconference session in October. In that very first session, the excitement level remained high throughout, but by the start of the second hour the strain of concentrating so long in English seemed to take a toll on many of the Japanese participants. Some heads started to droop and attentions seemed to wander. In contrast, in the January session all the students in Tokyo – whether they were directly participating in the discussion or not – remained alert and fully engaged from start to finish.

Just three days before the scheduled date of the last videoconference session, word arrived that facilities at UW were not available. Advance reservations had not been made and all videoconference facilities had already been booked. Fortunately, we were able to reschedule five days later. Although several students had other obligations and could not attend, a substantial majority on both sides participated in an open-ended and lively discussion of cross-cultural communication and negotiation issues, and of lessons for future years. One proposition on which everyone agreed was that, while the videoconferences, e-mail exchanges, and CU-SeeMe sessions all are valuable, there still is no substitute for direct face-to-face meetings. The unanimous view was that the project should culminate by bringing the teams together for a few days of face-to-face negotiations in Tokyo, Seattle, or perhaps the midway point of Hawaii!

[*Update as of 2005:* Over the first five years of the course, the basic structure and elements have remained remarkably stable. Inevitably, though, many of the specifics have changed. To mention just a few of the major changes:

Collaborators have changed. Sieberson moved to Oregon, necessitating a shift in collaborators on the UW end; and various guest experts have participated in the videoconference sessions over the years.

The composition of students has shifted. On the Todai end, most of the students are undergraduates, with a few Japanese graduate students and a few foreign graduate students each year (including, over the years, students from Australia, Brazil, Hungary, Mongolia, Spain, Taiwan, and the US). On the UW end, for the past three years a majority of the students have come from the LL.M. programs in either Asian Law or Intellectual Property, with students (many with practice experience) coming from a wide range of nations outside the US (including Belgium, China, Iran, Italy, Japan, Korea, Spain, and Vietnam). As a consequence, while the fact patterns remain squarely US/Japan transactions, the negotiators themselves are much more diverse; and aspects of cross-cultural communication and cross-cultural negotiation have become even more complex. (The 2005-06 year will bring yet another major change. On the Todai end, the course will shift from the undergraduate level to the third year of the new graduate-level law school.)

The simulations have changed. So far, each year the simulation has involved a corporate acquisition. For the past three years we have framed the simulations as acquisitions of a Japanese company by a US company. This has allowed us to allocate responsibility for preparing the first draft to the US side, while making that allocation of initial drafting responsibility more realistic. Another innovation has been to prepare separate fact patterns for two "principals" on each side, with some conflict in their respective interests (*e.g.*, officer of parent company and president of subsidiary on acquiror side; two cousins, each holding 50% of shares, on acquiree side). By doing so, we have introduced some tension into the internal relations on each side, typically requiring intra-team negotiations to adjust those interests. For the first three years, we developed a completely new simulation each year. The fourth and fifth year, we used the third-year simulation again, but with modest revisions to the fact patterns each year. Interestingly, even those modest changes led to very different dynamics for the negotiations. (Moreover, individual students, true to their role-playing, have interpreted the fact patterns in different ways, again leading to different dynamics for the negotiations of the various teams.)

Perhaps the most noticeable change has come on the technology front. Both Todai and UW have acquired Internet-based videoconference facilities with large-scale monitors and excellent audio. Since these facilities are Internet-based, telephone line charges no longer apply, so the cost of use is very low. In addition to the four "all hands" videoconference sessions, each of the three teams has been able to use the videoconference facilities for a one-hour face-to-face negotiation session each week, for the six weeks of negotiations. Next year is likely to bring a further improvement in facilities. Todai's new law school is in the process of outfitting two classrooms for videoconference use, with the new facilities to have two monitors – one for video of the participants, the second allowing the teams on each end to view the contract language as they revise it on screen.]

## IV. EDUCATIONAL BENEFITS

The educational benefits of the project extend broadly. When the American Bar Association's Task Force on Law Schools and the Profession compiled its report on Legal Education and Professional Development (the so-called MacCrate Report) in 1992,[38] it identified the following ten "fundamental lawyering skills" that should be imparted through the educational process: problem solving, legal analysis and reasoning, legal research, factual investigation, communication, counseling, negotiation, litigation and alternative dispute resolution procedures, organization and management of legal work, and recognizing and resolving ethical dilemmas. In Japan, the Justice System Reform Council compiled a similar list. In its Interim Report issued in November 2000, that Council identified the following "qualities essential for the legal profession in the 21st century": "such basic qualities as rich human nature and sensitivity, broad education and specialized knowledge, flexible thinking power, and abilities in persuasion and negotiation, along with such additional skills as powers of insight into society and interpersonal relations, appreciation of human rights, knowledge of cutting-edge fields of law and of foreign law, and an international perspective and language ability."[39] The report also recommended that legal education incorporate a mix of theory and practice and promote collaboration in teaching between scholars and practitioners.

The joint Todai/UW seminar alone of course could not ensure mastery of all of these skills and qualities, but it did incorporate substantial elements of all the items on both of the above lists (not to mention such other skills as legal drafting and teamwork). Considering the ten fundamental lawyering skills identified by the MacCrate Report, this project, from the very outset, necessitated (1) factual investigation, (2) communication (initially between lawyers and clients), (3) counseling, and (4) problem solving. Almost immediately, students found themselves heavily engaged in (5) legal research and (6) legal analysis and reasoning, with considerable focus on the possibility of (7) litigation or alternative means for resolving labor and environmental disputes (and on the possibility of litigation over the enforceability of the Memorandum of Understanding itself). The students also very quickly faced the need to (8) organize and manage the broad range of legal work involved. Needless to say, (9) negotiation lay at the center of the month-long second phase of the simulation. Yet the need for all of the other skills listed above also continued and, if anything, intensified throughout that second phase. Students quickly discovered, for example, that factual investigation does not end when negotiations begin. And communication skills of course took on even greater importance and far greater difficulty when Todai students began to interact with

38 AMERICAN BAR ASSOCIATION, SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, Legal Education and Professional Development: An Educational Continuum, Report of The Task Force on Law Schools and the Profession: Narrowing the Gap (Chicago 1992).

39 SHIHÔ SEIDO KAIKAKU SHINGIKAI [Justice System Reform Council], *Chûkan hôkoku* [Interim Report], issued Nov. 20, 2000, reprinted in: Jurisuto 1191 (2000) 143.

their UW counterparts. Finally, as mentioned earlier, Sieberson's inquiry regarding the impact of malpractice concerns generated considerable study and a lively discussion of (10) ethical dilemmas and professional responsibility standards.

Similar observations could be made regarding each of the "essential qualities" identified by the Justice System Reform Council. Given the ongoing debate over legal education reform in Japan, one particularly noteworthy aspect was the collaboration between practitioners and academics, with a mix of practice and theory.

Comments from the Todai and UW students, both oral and in thorough written evaluations, confirm the broad educational benefits of the seminar. In their evaluations, students offered numerous suggestions for ways to improve the seminar in the future, several of which are mentioned later. Overall, however, students were overwhelmingly positive about the experience and repeatedly expressed the hope the seminar will continue in future years. Indeed, a frequently repeated theme in the student evaluations was a desire that the seminar not only be continued, but that it be expanded.[40] As these comments reflect, the students displayed a great thirst for offerings of this type.

One category of comments focused on practical skills. For example, in some form, nearly every student commented that the seminar provided a much better understanding of the structure, contents, and terminology of contracts, and of negotiation techniques and the drafting process. Most Todai students also noted that they had learned a great deal of English, both legal and non-legal. As one student commented, through the seminar she gained confidence that, even if she could not express herself perfectly in English, she could convey the gist of her views.

Another category of comments focused on the value of the involvement of practitioners. Many students commented that, through the participation of practitioners from both Japan and the United States, they gained a much better appreciation for the roles played by attorneys and by corporate legal departments, as well as for differences in practices and attitudes between the two nations.

The latter point ties to another broad category of comments, which focused on the importance of the mix of theory and practice. Several students on both sides noted that they had read articles and listened to lectures discussing differences in contract style and contract consciousness between Japan and the United States, but those articles and lectures always had seemed vague and abstract before. Through the seminar, the students observed, they gained a concrete understanding of the differences. Several students also noted the value of studying foreign law in a concrete context.

Another frequently voiced set of comments emphasized that the seminar had revealed the need for further study. Several students observed that the seminar had shown

40 Two Todai students even prepared detailed outlines for expanding the seminar to a yearlong offering; and a few students suggested adding a second simulation project with another university within Japan, or elsewhere in Asia, or in Europe. (As they observed, addition of a non-US university would enable further comparison of negotiating styles.)

how important it was for those engaged in international transactions to understand not just the foreign nation's law, but the society, culture, business practices and the like, as well.[41]

Finally, a common theme in the students' comments on both sides was the value of the interaction with the foreign students.

Admittedly, most of the above educational benefits can be attained to some degree through a purely domestic simulation course or, as in the case of the prior UW International Contracting model, by involving foreign students studying at a US law school as simulation participants. Many of the benefits, however, were greatly enhanced by the truly transnational nature of this project. For the Japanese students, the month of negotiations constituted something of an immersion course in English; and for students on both sides, the seminar provided an unrivalled experience in cross-cultural communication. The interaction between teams of students with very different backgrounds demanded greater sensitivity and attention to interpersonal relations than would be the case in a domestic simulation. The study of foreign law took on more importance and a greater sense of reality in the context of negotiating a concrete transaction with "lawyers" from the other jurisdiction; and the interaction with foreign students provided a valuable international perspective. The videoconferences, interactive video sessions, and widespread use of online research tools (not to mention the extensive reliance on e-mail) provided exposure to technological tools that will undoubtedly become commonplace in business settings and legal practice within the next few years. Finally, and perhaps most importantly of all, the seminar provided students from the two nations the chance to get to know each other in the context of a shared – and rather intense – experience.

In addition to the above educational benefits, the project has generated spillover benefits with regard to research. One is the Web site for the project. The Web site remains a work in progress; but there are plans for further refinement prior to the coming year's offering of the seminar and in the years ahead. I envision that the Links page, in particular, will provide a useful tool for locating information on Japanese and US law, business, and society; international contracting; and other relevant topics.

One item already referenced on the Links page is the Web site of the Contracting and Organizations Research Initiative (CORI) at the University of Missouri. That site contains an archive of over 3000 actual contracts from the United States, sorted by category and searchable on-line. Learning of that site has given rise to discussions with other colleagues at Todai regarding the possibility of assembling a similar archive for

41 Along similar lines, one Todai student (who has passed the Judicial Examination and plans to become an attorney) commented that the seminar had demonstrated to him how important it was to understand accounting. He announced that he had decided to pursue a CPA license, as well.

41a See article by ANDERSON / EIZUMI in this issue, p. 101 note 22.

Japanese contracts. If those discussions succeed, the new archive will represent a valuable resource for studying comparative contracting behavior and other topics.

Over time, the experiences of the teams involved in negotiations in this project should also provide a set of data to test various propositions relating to differences in negotiating styles and contract consciousness between the United States and Japan.

As a final set of benefits, this project may help spur other collaborations in the future. At UW, discussions are already underway regarding the possibility of using the same basic format for a joint International Contracting course with institutions in China or elsewhere in Asia and with an institution in Europe. At Todai, colleagues from the law faculty and other faculties have expressed interest in the possibility of using some of the same technological tools to develop joint offerings in other fields. Thus, just as this project grew out of the International Contracting course and the UW/Tohoku engineering collaboration, this seminar in turn may stimulate other innovative projects.

[*Update as of 2005:* Over the first five years, student comments about the course have remained enthusiastic and highly consistent; and the above list of educational benefits continues to apply. Unfortunately, the news with regard to the anticipated research benefits is not quite so rosy. The Web site received little use for the first two years, and faded away after the Web site coordinator at UW who had developed the site moved to a new position. Efforts to create a CORI-style contract archive in Japan failed. The CORI archive in the US (which, as of January 2005, exceeds 25,000 contracts) consists mainly of contracts made available through public disclosure filings, primarily filings with the US Securities and Exchange Commission. Japan does not have a similar system for mandatory public disclosure of actual executed contracts, and efforts to gain access to actual contracts were unavailing. The very wide range in nationalities and backgrounds of the team members at both Todai and, especially, UW make it virtually impossible to use the experiences from this seminar to test propositions regarding negotiating behavior of Japanese and Americans. And, at least to date, while many colleagues at Todai have expressed interest in the seminar, it has not spurred other videoconference-based transnational collaborations. I remain hopeful, though, that more such collaborations will develop when the videoconference facilities become available on-site in the law school building. Thus, most of the items on the above list of anticipated research benefits remain unfulfilled. This seminar and other negotiation-related courses and projects at Todai and other universities in Japan have, however, led to a wide range of research on negotiation and negotiation training, including several new books.]

## V. IMPLICATIONS FOR JAPANESE LEGAL EDUCATION

This seminar was not totally unique for Japan. In the early 1990s, during a year as visiting professor at Tohoku University, Haley tried to set up just such a joint seminar with UW, but found that the technology still was not sufficiently advanced. As I recently discovered, however, Prof. Gerald McAlinn of Aoyama Gakuin University in Tokyo collaborated with Prof. Arthur Rosett at UCLA School of Law on a joint contracting project for a few years in the late 1990s, in which Japanese students acted as "clients," obtaining advice by e-mail from US "attorneys" enrolled in Rosett's first-year Contracts class. Others may well have pursued similar projects. Furthermore, this was not the first seminar at Todai to incorporate a negotiation simulation. Kashiwagi, again with the collaboration of McAlinn, included negotiation simulations on a smaller scale in a number of his International Business Transactions seminars; another colleague regularly teaches a Negotiations seminar which utilizes simulations; and several other colleagues have used simulation exercises. This seminar also was far from the first to involve collaboration with practitioners.

Nonetheless, this seminar was unusual for Japan in a number of respects, quite apart from the technical elements and the transpacific dimension. As examples, the use of a major simulation was unusual; the collaboration with practitioners was unusual; and even the heavy practice orientation itself was unusual.

The experience with the seminar reveals several important points for Japanese legal education. First, as the reactions of the Todai students reflect, there is a tremendous thirst among students in Japanese law faculties for offerings of this sort. Indeed, the very fact that a seminar by a relatively unknown new professor could be as heavily oversubscribed as was this one attests to the same point. Second, despite the stereotype that Japanese students work very hard during high school in order to gain admission to the most prestigious universities but then relax during college, the experience with this seminar demonstrated that Japanese students are fully up to the challenge of an offering of this sort and, when given an exciting project to pursue, will devote time and energy to it. Third, while setting up a two-nation, two-university joint seminar may not be easy, in a city such as Tokyo it should be eminently feasible to construct a stimulating single-university seminar that mixes theory and practice. Tokyo has a large number of outstanding practitioners who would be dedicated and effective teachers. Given the opportunity, many of them undoubtedly would be delighted to collaborate on designing and implementing seminars that blend theory and practice. The result would not only be educational and stimulating for students, it also likely would be educational and stimulating for the academic collaborator and the practitioner collaborator alike.

In the current debate over establishment of new law schools in Japan, a number of universities, along with representatives of the organized bar, are giving considerable attention to the possibility of organizing such collaborative, practice-oriented course offerings. Accordingly, in the event the Japanese Diet adopts the Justice System Reform

Council's proposal and approves the establishment of a new law school system, it seems likely the new institutions will incorporate many such offerings.[42]

Whether collaborative offerings with a practice orientation will increase at the law faculty level is far less certain. My personal sense is that, if the new law school system becomes a reality and the law schools begin to introduce such offerings, the existing law faculties will follow their lead. If the Diet does not adopt legislation recognizing the new law school system, presumably there should be even greater pressure on the existing law faculties to expand their practice-oriented offerings. Paradoxically, though, in that case it is entirely possible the status quo will remain intact, with only modest gradual increases in collaborative and practice-oriented offerings.

## VI. LESSONS FOR FUTURE JOINT PROJECTS

In hopes that the joint Todai/UW seminar may provide hints for others considering similar projects, I will close by suggesting a few lessons drawn from the experience: first, a few lessons regarding the coming year's offering of this seminar, followed by a set of broader lessons.

### *A. Lessons for the Coming Year's International Contracting Seminar*

For this particular seminar in the coming year, items for improvement include: refining the schedule so students have a longer period for the negotiation, coordinating in advance on drafting the problem and assembling appropriate class materials for both sides, structuring the problem so it involves more elements from the laws of both nations, incorporating participants from the LL.M. program and perhaps the Business School at UW and seeking more participants with actual business experience at Todai, and, of course, utilizing CU-SeeMe from a much earlier stage.

### *B. Important Considerations for Other Transnational Collaborations*

Turning to broader lessons for others contemplating a joint offering linking two or more institutions, whether domestically or across national boundaries, the following is a listing of important considerations drawn from the past year's experience.

*Administration Support:* One important factor is being sure the administrations of both institutions support the initiative. Such support is linked to at least two other factors listed below: funding and flexibility. The connection to funding is obvious. The flexibility aspect may be even more important, though, since special accommodations

42 [*Update as of 2005:* In fact, the new law schools have instituted a wide range of practice-related offerings.]

are likely to be needed for various aspects of the new program. [*Update as of 2005:* Support by the administrations at both Todai and UW has continued to remain very important. At both institutions, the administrations have supported acquiring and refining the videoconference facilities and have made accommodations with regard to such aspects as scheduling and staff support.]

*Faculty Support:* Having strongly committed faculty collaborators on both ends is very important, for obvious reasons. Support by other faculty members can significantly enhance the project.

*Staff Support:* Support from computing and communications staff on both ends is crucial with respect to the technical aspects. Staff support is important for many other aspects, as well.

*Coordination of Technology:* Coordinating and ensuring compatibility of the technology is vital. The technology should all be up and running at both institutions in advance and connections should all be tested. To ensure compatibility, it would be ideal for a knowledgeable member of the computing and communications staff from one institution to visit the other institution in advance and consult directly with the corresponding staff there. Necessary equipment should be installed in locations that are secure but also are accessible at the times the equipment will be needed, taking into account time differences between the participating institutions.

[*Update as of 2005:* One additional lesson from the first five years is the importance of ease of operation for the videoconferencing equipment. Vendors have a tendency to push the most up-to-date, sophisticated technology – not least because the profit margin on such equipment is generally high. Mastering the operation of sophisticated equipment or software packages often requires considerable training and practice, however; and more elaborate setups sometimes require the continual presence of trained technical staff. That has proven to be the case with the videoconferencing facilities at UW. In 2003, UW's law school moved into a beautiful new building. There, the videoconference equipment is state-of-the-art quality, with multiple cameras and individual microphones at each desk; but the control panel used to operate the system is located in a separate control room adjacent to the classroom, and a technical staff member must be present at all times to run the system. In contrast, the single camera setup at Todai (a Polycom ViewStation) can be operated with a small, easy to use, hand-held remote control; at each session I designate one student as the camera operator, thereby minimizing the need for technical staff support.]

*Coordination of Content:* The content of the joint offering should be coordinated and relevant materials prepared in advance. For this purpose, the collaborating faculty members should meet in person well in advance.

*Coordination of Schedules:* Academic calendars must be coordinated, which may in turn necessitate various accommodations. If real-time conferences are planned, time differences between the two institutions must be taken into account in scheduling. Necessary facilities should be reserved far in advance.

*Coordination of Students:* If students will be working on projects together, efforts should be made to ensure the students have a compatible level of skills and experience. As mentioned earlier, in the context of the contracting simulation, it would be valuable to include business school students as well as law students. Needless to say, however, the more institutions involved, the greater the coordination burdens become.

*Coordination of Credits and Workload:* Consideration should be given to ensuring the number of credits received by students at the two schools is roughly equal. A great imbalance in credits may represent a hidden barrier to student cooperation.

*Publicizing the Offering; Web Site:* To ensure a meaningful level of student interest, it is important to publicize the offering in advance. One means of publicizing the offering is to have a well-organized Web site. A good Web site also can aid in many aspects of coordination and can help link the students at the participating institutions.

*Funding:* During the start-up phase, additional funding is likely to be needed for the purchase and installation of necessary equipment; but one should not assume the expense will be prohibitive, since costs are coming down steadily and the total initial capital cost is far lower than many people realize.[43] Of course, even after the initial investment has been made, other costs are inevitable. These include maintenance and security of the equipment, providing technical staff for videoconferences and other needs, and, where necessary, long-distance telephone charges for the videoconference connections.[44] Another ongoing expense is the travel budget needed for the collaborating faculty members to meet in person for planning purposes.

*Flexibility:* Of all the factors on the list, this is by far the most important. Virtually all aspects of organization and coordination demand flexibility – on the part of the institutions, the administrations, the faculty, the staff, and the students.

*Energy:* In light of all the other items on this list, the need for energy should go without saying.

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43 As mentioned earlier, as of January 2001, the Polycom ViewStations we used for the full group videoconferences were listed on Polycom's US Web site at under $10,000 each and the CU-SeeMe software and camera together were listed on White Pine Software's Web site at just $69. These figures do not include other equipment, cables, etc., or installation costs.

44 The advent of Internet-based videoconferencing equipment should eliminate the expense associated with long-distance charges, however. [*Update as of 2005:* As mentioned earlier, for the Todai/UW collaboration, Internet-based videoconferencing has in fact eliminated long-distance charges. On the Todai end, the equipment is sufficiently simple to operate that students can control the camera angle and focus, thereby minimizing the need for technical staff support. At UW, though, as mentioned earlier, the state-of-the-art facilities, while providing much more impressive video capability, require coordination by a technical staff member at all times.]

### *C. Final Lesson: Do Not Let the Preceding Set of Lessons Deter You*

The twelve items on the preceding list all are important; it would be ideal if one could resolve all or nearly all of them before commencing a project of this sort. The final lesson from the past year's experience, though, is not to become so preoccupied with solving all concerns in advance that you forgo an exciting idea.

In retrospect, at the time I embarked on the joint seminar, I could count on at most two of the above twelve items: administration support and energy – and I was not entirely sure how long my energy level would last. Indeed, as of three weeks before the seminar was scheduled to start, there was still no faculty collaborator at UW (and hence virtually no opportunity to coordinate the simulation or other materials in advance), it was unclear whether there would even be enough students at UW to mount the seminar, scheduling had yet to be worked out, and, with the exception of e-mail, none of the key technology was in place.

In August, when I arrived at Todai and sought to confirm the availability of video-conference facilities on campus, I received the following advice from the Center for Informational Infrastructure: "Wait till next year. That will give us time to coordinate. We're planning to look into international projects, so maybe by then we will be able to provide the necessary support for your project. But it would be impossible to be ready for this year." Many people undoubtedly would have offered the same advice with regard to the substance of the seminar: "Wait a year so you will have time to coordinate and work out the details in advance."

Waiting a year simply was not an option for me. I knew I would become far too busy in the interim to commit the time and effort needed to get the project off the ground the following year, so it was then or never.[45] I pushed ahead in what, a friend later informed me, is known in the techno-community as "plug and pray" mode. My prayers must have been answered. The seminar was a great success and the response by students on both sides has been gratifying.

I may just have been very lucky. I prefer two other explanations. First, the technology is now sufficiently advanced and simple to use that even a neophyte such as I can utilize it. Second, with sufficient flexibility on the part of the institutions and individuals involved, one can overcome a series of seemingly imposing hurdles; and, in my experience, when institutions, administrations, faculty, staff and students are given the opportunity to participate in an innovative and exciting project, they all are capable of displaying great flexibility. In sum, my parting advice is that one should go into a project such as this with an awareness of all the logistical obstacles that must be met, but one should go into the project nonetheless, and not let uncertainty or fear deter worthwhile collaborations.

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45 Even if waiting had been an option, most of the momentum likely would have been lost after a year's delay.

ZUSAMMENFASSUNG

*Der Autor des Beitrags, Prof. Daniel Foote, der lange Zeit an der University of Washington, School of Law, in den USA tätig gewesen war, folgte im Jahre 2000 einem Ruf der juristischen Fakultät der Universität Tokyo auf einen Lehrstuhl in Japan. Als eines seiner ersten Unterrichtsprojekte veranstaltete er ein gemeinsames Seminar zwischen der University of Washington und der Universität Tokyo zur Praxis internationaler Vertragsbeziehungen. Die an dem Seminar teilnehmenden Jurastudenten aus Seattle bildeten Verhandlungsteams, denen Verhandlungsteams von Jurastudenten aus Tokyo gegenüber standen. Die Teams auf beiden Seiten nahmen sodann gemeinsam an simulierten Vertragsverhandlungen im Zusammenhang mit einer großen Unternehmensübernahme teil. Zu diesem Zweck wurden Videokonferenzen veranstaltet, E-Mails ausgetauscht und andere internetbasierende Kommunikationsmöglichkeiten genutzt.*

*In seinem Beitrag berichtet der Autor über seine bei diesem Projekt gemachten vielfältigen Erfahrungen. Neben einer Beschreibung des Inhaltes und der Struktur des Kurses enthält der Beitrag eine Darstellung der verschiedenen technischen und sonstigen Schwierigkeiten, die sich bei der Organisation dieser transnationalen Lehrveranstaltung ergeben haben, sowie der für die einzelnen Probleme gefundenen Lösungswege. Schließlich wägt der Autor die Vor- und Nachteile einer solchen Veranstaltung gegeneinander ab.*

*(Deutsche Übersetzung durch die Redaktion)*